IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 2ND APRIL 2007 / 12TH CHAITHRA 1929

M.F.A.No.711 of 2002(E)

O.P.(M.V).NO.745/1995 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALA

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APPELLANT: PETITIONER:-

K.THANKAPPAN, S/O.N.KESAVAN ACHARI,
THONIKADAVILL,VANNARAKKAYAM,KANJIRAPPALLY
KOTTAYAM DISTRICT.

BY ADV. SRI.P.K.BALAKRISHNAN NAIR
SMT.BETTY K.ALUKKA
SMT.G.VIDYA

RESPONDENTS: RESPONDENTS:-

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1. N.K.RAJU, NJALLIMACKAL HOUSE, KOTHALA.

2. P.S.CHANDRA BABU,
S/O.V.K.SANKARA PILLAI, PARIYATHUKUNNEL, VELLOOR PO.
KOTTAYAM.

3. ORIENTAL INSURANCE COMPANY LTD.,
KOTTAYAM DIVISION, REPRESENTED BY IT'S DIVISIONAL
MANAGER, DIVISIONAL OFFICE, KOTTAYAM.

R1 BY ADV.SMT.L.GIRIJA.
R3 BY ADV. SRI.V.P.K.PANICKER

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 02/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.711 of 2002-E

Dated, this the 2nd day of April, 2007

JUDGMENT

The petitioner in O.P.(M.V.).No.745 of 1995 on the file of Motor Accidents Claims Tribunal, Pala is the appellant. The appellant is the owner of a jeep bearing registration No.KRO 8971. The appellant filed the Original Petition claiming an amount of Rs.50,000/- as compensation on account of the damages sustained to the jeep. It was averred that on 7.6.1992 while the jeep was proceeding from Kanjirappally to Ranni, a stage carriage bus bearing registration No.KRK 8994 came in a rash or negligent manner and hit against the jeep causing extensive damages. The appellant claimed an amount of Rs.50,000/- as damages. The owner of the stage carriage bus filed a written statement disputing the negligence of the driver of the bus and also the quantum. The Insurer also filed a written statement disputing the accident and the quantum of compensation. The Tribunal after evidence found that there was no evidence to hold that the

accident occurred due to the negligence of the driver of the bus and dismissed the claim petition.

2. The appellant-petitioner was examined as P.W.1. Admittedly he was not an eye witness to the incident. So, his evidence cannot be accepted. The scene mahazar produced in this case, which was marked as Exhibit A2, shows that the accident occurred due to the negligence of the driver of the jeep. So, the finding of the Tribunal that the appellant failed to prove that the accident occurred due to the negligence of the driver of the bus is only to be confirmed.

3. The appellant tendered evidence to the effect that he had spent an amount of Rs.48,000/- for repair of the jeep and he is entitled to get that amount as damages. Exhibit A3 report shows the damages sustained to the jeep. The appellant produced Exhibit A5 bill for Rs.17,635/- and also Exhibit A6 series of bills for purchase of spare parts for an amount of Rs.23,430.44 and Exhibit A7 bill for lifting the jeep from the canal and Exhibit A8 for towing the jeep to garage. The Insurer produced Exhibit B1 to show that the damages was only to the tune of Rs.5,750/-. R.W.2 is the Insurance Surveyor. According to him, he assessed

the damages at Rs.5,750/- as shown in Exhibit B1 and assessed an amount of Rs.3,500/- as labour charge and Rs.4,650/- as depreciation. But, in view of the finding that the appellant failed to prove that the accident had occurred due to the negligence of the driver of the stage carriage bus, no compensation can be awarded. The appeal is only to be dismissed.

In the result, the appeal is dismissed.

K.Padmanabhan Nair
Judge

vku/-